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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,477	08/18/2006	Steven Burgess Tattum	APLE 2 00007	6475
27885	7590	11/05/2008		
FAY SHARPE LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			EXAMINER YOON, TAE H	
			ART UNIT	PAPER NUMBER
			1796	
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			11/05/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/571,477	Applicant(s) TATTUM ET AL.	
	Examiner Tae H. Yoon	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The recited “The use of” is non-statutory subject matter, and “A method of using” is suggested.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim contains “/” rather than a sentence ending period (.), and thus it is indefinite.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 10-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Flynn et al (US 6,068,910).

Flynn et al teach a composition comprising a PET copolyester and glycerol monostearate in examples 2, 5 and 8, and extruded sheet and film thereof at col. 7, lines 18-26. Said extruded sheet and film would meet the instant molded article absent further limitation and would have the instantly recited properties inherently. Also, an extrusion and calendaring would meet the instant claim 14 absent further limitation.

Thus, the invention lacks novelty.

Claims 1-3 and 9-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Murase (US 4,637,957).

Murase teaches use of fatty acid esters in processing PET in Example of Application 1 wherein oleyl oleate and rapeseed oil are taught.

Thus, the invention lacks novelty.

Claims 1-4 and 10-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Maier et al (US 5,164,436).

Maier et al teach transparent thermoplastic molded articles such as polyethylene terephthalate containing lubricants and mold releasing agents in abstract and example 5 and at col. 3, line 58. Various esters of montanic acid are taught in example 2, and glycerol

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monostearate is taught in example 3. The molded article would have the instantly recited properties inherently.

Thus, the invention lacks novelty.

Claims 1-4 and 9-14 are rejected under 35 U.S.C. 103(a) as obvious over Maier et al (US 5,164,436).

The invention claim 9 recites montanic acid triglyceride over montanic acid ester of glycerol (wax 3, col. 4, line 68).

However, it would have been obvious to one skilled in the art at the time of invention to utilize montanic acid triglyceride in Maier et al since said montanic acid triglyceride would be obvious variation of said montanic acid ester of glycerol which would have three variations such as mono-, di- and tri- glyceride absent showing otherwise.

Claims 1-6 and 10-14 are rejected under 35 U.S.C. 103(a) as obvious over Maier et al (US 5,164,436) or Flynn et al (US 6,068,910) in view of Leininger (US 4,965,301).

The instant claims 5 and 6 recites ethoxylated fatty ester as a lubricant over Maier et al and Flynn et al. However, such lubricant is well known in the art, and Leininger teach various ethoxylated lubricants such as ethoxylated esters of fatty acids such as ethoxylated glycerol esters at col. 6, lines 26-64. Said fatty acids encompass the instant fatty acids.

It would have been obvious to one skilled in the art at the time of invention to utilize ethoxylated esters of fatty acids of Leininger in Maier et al or Flynn et al since Maier et al and

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Flynn et al teach esters of fatty acids as lubricants and since ethoxylated forms of fatty acid esters as lubricants are well known in the art absent showing otherwise.

Claims 1-5 and 7-14 are rejected under 35 U.S.C. 103(a) as obvious over Maier et al (US 5,164,436) or Flynn et al (US 6,068,910) in view of Hayes (US 7,220,815).

The instant invention recites other fatty esters over Maier et al and Flynn et al. However, the instant fatty esters are well known plasticizers for polymers as evidenced by Hayes who teach various fatty esters such as sorbitan monooleate, glycerol monostearate and acetylated glyceride for improving processing or mechanical properties at col. 10, lines 35-67. Myvacet 908 with 96% acetylation in lines 58-59 would meet the instant acetylated triglyceride.

It would have been obvious to one skilled in the art at the time of invention to utilize fatty esters of Hayes in Maier et al or Flynn et al since Maier et al and Flynn et al teach esters of fatty acids and since the instant fatty esters are well known plasticizers for polymers absent showing otherwise.

Claims 1-4 and 9-14 are rejected under 35 U.S.C. 103(a) as obvious over Maier et al (US 5,164,436) and Flynn et al (US 6,068,910).

Maier et al teach transparent thermoplastic articles such as polyester containing lubricants and mold releasing agents in abstract and at col. 1, line 16. Brenner et al teach employing various lubricants such as glycerol monostearate and antistatic agents such as polyethylene glycol esters at col. 13, lines 7-22. Flynn et al teach PET copolyester in examples 2, 5 and 8.

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It would have been obvious to one skilled in the art at the time of invention to utilize the art well known polyester such as PET copolyester of Flynn et al in Brenner et al since Brenner et al teach use of all or any amorphous polyesters and further to employ processing aids such as glycerol monostearate therein since Brenner et al teach such modification, and the instant PEG-diester is obvious modification polyethylene glycol esters of Brenner et al absent showing otherwise.

Claims 1-4 and 9-14 are rejected under 35 U.S.C. 103(a) as obvious over Brenner et al (US 6,740,697) and Flynn et al (US 6,068,910).

Brenner et al teach transparent amorphous thermoplastic articles in abstract and table 3 (col. 16) wherein polycarbonate is used. Said amorphous thermoplastic includes polyesters (col. 9, lines 45-47). Brenner et al teach employing various lubricants such as glycerol monostearate and antistatic agents such as polyethylene glycol esters at col. 13, lines 7-22. Flynn et al teach PET copolyester in examples 2, 5 and 8.

It would have been obvious to one skilled in the art at the time of invention to utilize the art well known polyester such as PET copolyester of Flynn et al in Brenner et al since Brenner et al teach fatty acid esters and polyethylene glycol esters and since the instant PEG-diester is obvious modification of polyethylene glycol esters of Brenner et al absent showing otherwise.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H. Yoon whose telephone number is (571) 272-1128. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tae H Yoon /Tae H Yoon/
Primary Examiner
Art Unit 1796

THY/November 3, 2008